

REMARKS

The applicants have carefully considered the Office action dated December 29, 2006. By way of this Response, claim 47 has been cancelled without prejudice. In view of the following, it is respectfully submitted that all pending claims are in condition for allowance and favorable reconsideration is respectfully requested.

As an initial matter, the applicants note that claims 23 and 51 stand allowed and are not further discussed herein.

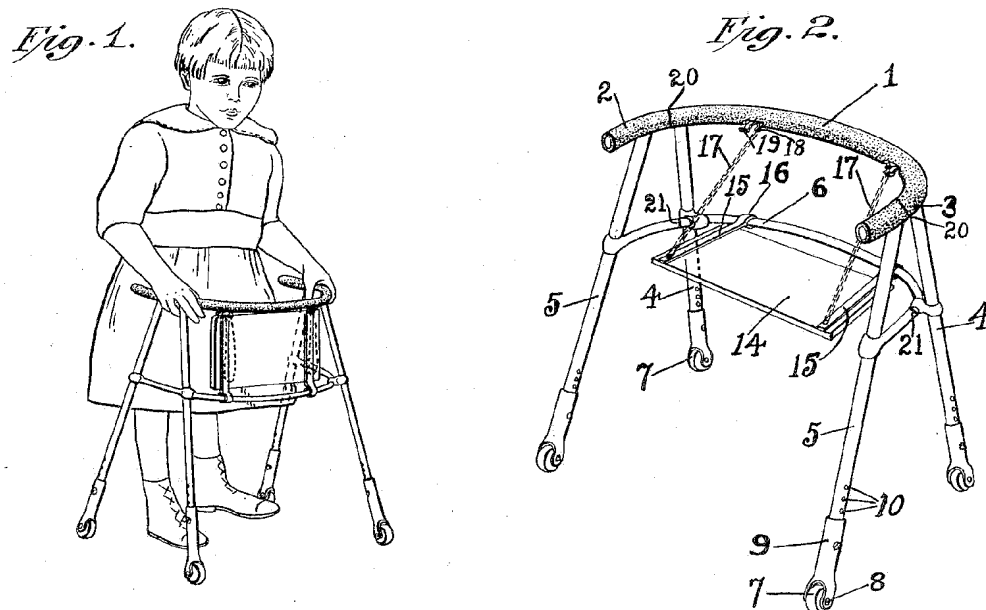
Claim 47 was likewise indicated as allowable. However, because claim 51 is claim 47 rewritten in independent form, claim 47 has been cancelled as duplicative of allowed claim 51.

As a final initial matter, the Office action indicated that claims 15-17 would be allowed if amended to address certain unspecified 112 rejections. It is believed the language referencing 112 rejections is an artifact of an older action, as no 112 rejections are made in the Office action. Since no rejections of any kind were made with respect to claims 15-17, claims 15-17 are also in condition for allowance and are not further discussed herein.

Turning to the art rejections, the Office action rejected claims 1-14, 18-22, 24-31, 34, 36-38, 42 and 44 under 35 U.S.C. § 103 based on Blewitt et al, U.S. Patent 1,448,783, Sanchez, U.S. Patent 4,480,864, Sudo, U.S. Patent 3,796,430, Perego, U.S. Patent 5,071,149 and/or Meeker et al., U.S. Patent 6,299,247. Applicants respectfully traverse these rejections.

All of the rejections rely primarily on the combination of Blewitt and Sanchez. Blewitt is directed to an invalid support that functions as a wheeled walk behind walker and includes a seat 14 that can be stowed in an upright

position under the handle 1 when a child is using the walker to walk, and can be deployed in a down position when the child wishes to sit. Figures 1 and 2 of Blewitt are reproduced below for ease of reference:



There is no teaching or suggestion in Blewitt of mounting the wheeled walker on a base to prevent its movement. On the contrary, the object of the Blewitt invention “is to enable such invalids to obtain support so that they may move about freely without personal assistance and engage in indoor or outdoor games, play or other activities.” (Blewitt, Col. 1, lines 35-39). Thus, the *primary purpose of Blewitt is to promote movement of a disabled child*. In view of this purpose, a person of ordinary skill in the art looking to Blewitt would have absolutely no incentive to contradict the express Blewitt teachings and purpose by placing the Blewitt walker on a base to prevent movement.

The Office action proposes combining Blewitt with Sanchez to recreate the inventions recited in the pending claims. However, absent

reference to applicants' disclosure, there is no reason to combine Blewitt and Sanchez. As mentioned above, Blewitt teaches the *promotion of movement* of a child using a wheeled walk behind walker. In contrast, Sanchez *describes preventing movement* of a traditional walker. There is no reason, absent reference to applicants' disclosure, to combine the diametrically opposed teachings of Blewitt and Sanchez to arrive at the inventions recited in the pending claims.

Furthermore, Sanchez is directed to a base panel to retain a baby walker against movement. There are three disclosed examples in Sanchez, namely, the example of FIGS. 1-5, the example of FIGS. 5-6, and the example of FIGS. 8-11. In each of the Sanchez examples, a ***traditional walker*** (i.e., a walker with a seat) is immobilized against horizontal movement. Sanchez does not teach or suggest immobilizing a walk-behind walker. It only describes immobilizing a ***traditional walker***. This is because *the entire purpose of Sanchez is to secure a child against movement*. In the words of Sanchez:

The general purpose of the present invention is to provide a walker which can easily and effectively be converted from a normal fully mobile condition to a stationary condition in which the mounting wheels can no longer roll against a floor surface but instead the device is very positively retained in any desired fixed position to prevent unwanted movement of the child and assure that he remain at the location in which he can do no harm to himself or items around him.

(Col. 1, lines 36-44)(emphasis added). *Immobilizing a walk-behind walker such as the Blewitt walker would not make any sense* in the context of Sanchez, because, by definition, the child would not be immobilized. On the

contrary, because a walk-behind walker has no seat, the child is not restrained and can simply walk or crawl away from the immobilize walk-behind walker and possibly be injured. Further, *the entire purpose of Blewitt as quoted above is to enable mobility of a child*. Accordingly, absent hindsight reference to the applicants' disclosure, a person of ordinary skill in the art would not think to use the immobilizing devices of Sanchez with a walk-behind walker such as Blewitt, as such usage would not meet the purpose of Sanchez and would contradict the purpose of Blewitt. Thus, the proposed combination of Blewitt and Sanchez would result in a device that was impractical, basically useless and, thus, unsalable to parents in the marketplace. Therefore, the combination of Blewitt and Sanchez proposed in the Office action can only be based on improper hindsight.

The United States Supreme Court recently issued the KSR Int'l Co. v. Teleflex, Inc., 550 U.S. ____ 2007, 207 WL 1237837 (2007) decision. This opinion is instructive on many issues surrounding the obviousness standard set forth in 35 U.S.C. § 103. For example, the Supreme Court states:

A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. ... This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

KSR, 207 WL at Page 10. Moreover, the Supreme Court made it clear that:

A fact finder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. See Graham, 383 U.S. at 36 (warning against a "temptation to read into the prior art the teachings of the invention in issue" and "guard against slipping into the use of hindsight" (quoting Monroe Auto

Equipment Co. v. Heckethorn Mfg & Supply Co., 332 F.2d 406, 412 (CA6 1964)).

KSR, 207 WL at Page 12. Thus, it is very clear that the law of the land continues to preclude the USPTO from utilizing the teachings of the invention to piece together the invention from the prior art. Since, as explained above, the combination of Blewitt and Sanchez would fail to meet the express purposes of both of those references, absent the improper use of hindsight, a person of ordinary skill in the art would never combine Blewitt and Sanchez. As a result, the rejections based on the Sanchez/Blewitt combination are improper and must be withdrawn.

Furthermore, *even if one were to combine Sanchez and Blewitt, one would still not arrive at the invention of claim 1*. As can be seen by referencing Figures 1 and 2 of Blewitt and Figures 1, 6 and 8 of Sanchez, *every example walker described in Blewitt and Sanchez includes a seat*. Therefore, if one were to combine Blewitt and Sanchez, one would arrive at a combination including a walker having a seat. In contrast, claim 1 expressly recites a child entertaining apparatus comprising a wheeled walk-behind walker *which is removable from the seat*. Since both Sanchez and Blewitt describe walkers with seats, any combination of Sanchez and Blewitt would also include a walker with a seat and, thus, would not meet the express recitations of claim 1.

Further, there is no teaching or suggestion for eliminating the seats of Sanchez or Blewitt. Indeed, the very invention of Blewitt is to include a seat that is hingedly mounted on a walker (See Blewitt's sole claim). The law is quite clear that, "[i]f the proposed modification or combination of the prior art

would change the principle of operation of the prior art invention, then the teachings of the references are not sufficient to render the claims prima facie obvious.” MPEP § 2143.01, citing, In re Ratti, 270 F.2d 810 (C.C.P.A. 1959). Therefore, it would not be an obvious modification to remove the Blewitt seat as such a modification would clearly change the operation of the Blewitt invention. Accordingly, not only is the proposed combination of Blewitt and Sanchez improper since it is based on hindsight, any combination of Blewitt and Sanchez would fail to meet the recitations of claim 1. Consequently, claim 1 and all claims depending therefrom are in condition for allowance.

Similarly, independent claims 20, 34, 36, 37, 42 and 44 are allowable. As explained above, the proposed combination of Blewitt and Sanchez is legally improper. On this basis alone, the rejections must be withdrawn. Moreover, claims 34, 36, and 37 specifically require the walk behind walker to not include a seat and, thus, as explained above, the proposed combination of Blewitt and Sanchez would not meet the recitations of these claims. Similarly, claim 42 specifically recited “removing the wheeled walker from the seat” and claim 44 specifically states that the wheeled walker is “removable from the seat.” Again, the proposed combination of Blewitt and Sanchez does not meet these recitations. Accordingly, it is respectfully submitted that independent claims 20, 34, 36, 37, 42 and 44 and all claims depending therefrom are in condition for allowance.

If the Examiner is of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is invited to contact the undersigned at the number identified below.

Respectfully submitted,

HANLEY, FLIGHT & ZIMMERMAN, LLC.
Suite 2100
150 South Wacker Drive
Chicago, Illinois 60606
(312) 580-1020

By: /James A. Flight/
James A. Flight
Registration No. 37,622

June 28, 2007